

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

EX PARTE OR LATE FILED

RECEIVED

OCT 27 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Revision of the Commission's) CC Docket No. 94-102
Rules to Ensure Compatibility)
with Enhanced 911 Emergency)
Calling Systems)

To: The Commission

**EX PARTE REPLY OF APCO
TO COMMENTS FILED IN RESPONSE TO PUBLIC NOTICE
OF AUGUST 16, 1999**

The Association of Public-Safety Communications Officials-International, Inc. ("APCO") hereby submits the following *ex parte* reply to comments filed in response to the Commission's *Public Notice* of August 16, 1999, regarding the Wireless E911 Report filed by CTIA, PCIA, APCO, NENA, and NASNA on August 9, 1999. Many of those comments address APCO's separate addendum to the Wireless E911 Report in which APCO makes certain proposals regarding the cost-recovery provisions of the wireless E9-1-1 rules.

APCO has proposed that the Commission's rules should be either clarified or modified to make clear that a wireless carrier's E9-1-1 obligations are not contingent upon there being a government-sponsored or government-administered mechanism for carriers to recover their own costs in implementing the E9-1-1 rules. In the absence of such a cost-recovery mechanism, carriers would recover their expenses directly from their own subscribers. For example, costs could be recovered through either a line-item "bill and keep" approach or simply as a cost of doing business reflected in a carrier's

No. of Copies rec'd 05
List ABCDE

overall pricing structure. States and other 9-1-1 authorities would continue to have the option of providing a funding mechanism for carriers, but would not be required to do so as a condition for implementation of the wireless E9-1-1 rules. This would eliminate the very difficult problems faced by many states in adopting cost-recovery legislation.

Several parties focus their opposition on the “good Samaritan” argument. They claim that because wireless subscribers often use their phones to report incidents for which they are witnesses, but not victims, “9-1-1 implementation cost should be spread among the general public” who benefit from the E9-1-1 capability.¹ However, even under the current interpretation of the rules, subscribers -- not the general public -- will pay for carriers’ E9-1-1 implementation costs. Nearly every cost-recovery mechanism adopted to date provides for carrier costs to be reimbursed from subscriber fees, not from general tax revenues. Thus, changing or clarifying the rules as proposed by APCO will not change who pays for E9-1-1; it merely eliminates the government as a collection and distribution agent.

The carriers’ suggestion that the general public benefits from wireless E9-1-1 is obviously true. However, it overlooks the fact that wireless carriers themselves will also receive substantial financial advantages. The wireless industry heavily markets its product as a safety device, and surveys have repeatedly shown that safety is the principal reason why most subscribers desire wireless service. Thus, by enhancing the safety capability of their product, wireless carriers are increasing its attractiveness to potential

¹ Comments of Omnipoint at 4.

consumers, with obvious economic benefits. More specifically, there may be substantial commercial applications to the very same location technology that will be installed to meet Phase II requirements. Therefore, while the public will clearly benefit from E9-1-1, the Commission's approach to cost-recovery must recognize that carriers too will benefit significantly from that capability.

Several carriers also argue in their comments that changing the cost-recovery rules "mid-stream" will force states to reverse progress already achieved regarding Phase I, and thus stall implementation of wireless E9-1-1. However, APCO is not suggesting that states must revisit cost-recovery rules adopted to date. States will continue to be free to adopt whatever cost-recovery provisions are deemed appropriate for their situation, including, but no longer limited to, recovery of carrier costs. More importantly, the "disruption" argument applies, if at all, only to Phase I. APCO is unaware of any states that have adopted cost-recovery procedures and fees sufficient to address the far more expensive Phase II requirements.

The Rural Cellular Association ("RCA") also opposes APCO's proposal, arguing that their members' per-subscriber costs are much higher than those incurred by urban carriers, and that a cost-recovery mechanism is necessary to "level the playing field." This argument is based on the fact that some, but not all, cost recovery mechanisms adopted to date establish a pool from which carriers recover their actual costs, without regard to their number of subscribers. However, since there is no FCC requirement that such a pool be established, keeping the rules as they are will not necessarily address the rural/urban disparity cited by RCA. Some states, such as Texas, have adopted cost-recovery procedures that recover and distribute funds on a per capita basis. Furthermore,

even if the rules are changed or clarified as APCO proposes, states would still have the option of adopting whatever cost-recovery mechanism is deemed appropriate for their unique situation (*e.g.*, a state with wide urban/rural disparity could choose to create a carrier cost-recovery mechanism with a pool approach).

The rural/urban disparity cited by RCA is also likely to be a far less important issue for Phase II than for Phase I. The Commission recently adopted rules for Phase II that will facilitate the ability of carriers to use “handset-based” technologies, which have much smaller fixed infrastructure costs (*e.g.*, cell site modification requirements) than most “network-based” technologies. As such, the “per subscriber” costs for rural carriers adopting handset-based technologies will be similar to costs incurred by urban carriers. Indeed, for this reason, the Commission has indicated that handset technologies may be particularly appropriate in rural areas.²

APCO had suggested in its Addendum to the Report that the current interpretation of the rules creates a perverse disincentive for carriers to select the most cost-effective means of providing E9-1-1 capability. Sprint PCS challenges that assertion, claiming that “CMRS carriers operate in competitive markets and this competition gives each carrier ample incentive to deploy the most cost-effective solution....”³ Competition is irrelevant, however, if the carriers are not ultimately responsible for paying for their own costs of implementation. Why should a carrier bother to seek the most cost-effective technologies if its costs will be recovered in any event?

² *Third Report and Order in CC Docket 94-102*, FCC 99-245, released October 6, 1999, at ¶23.

³ Comments of Sprint PCS at 15.

Shifting responsibility for costs to carriers could also help address the growing problem of pre-paid cellular service. Under these arrangements, wireless service is included in the price of a phone purchased from a retailer, or is otherwise provided outside of a normal monthly service contract. The challenge is to devise a method to ensure that pre-paid “subscribers” pay their fair share of 9-1-1 costs. If carriers are responsible for their own E9-1-1 costs, they will then have an incentive to somehow recover those costs from all users of their system, including pre-paid customers.

AirTouch, in its comments, notes that cost-recovery is best addressed in a negotiation process with each state, and that such a process leads to greater cooperation among the parties. However, changing or clarifying the cost-recovery rules as proposed by APCO would not eliminate the need to “negotiate” and cooperate with the carriers on other matters. Indeed, by taking cost-recovery out of the equation, the parties may be more likely to reach accommodation on other less contentious matters. Also, since states will retain the authority (but not the obligation) to provide carrier cost recovery mechanisms, carriers may have new found incentives to work with the states and PSAPs to make wireless E9-1-1 a reality sooner, rather than later.

AirTouch and others also point to states which have “successfully” adopted cost-recovery provisions. Yet, those testimonials also point out the difficult and time-consuming process of devising and winning approval for cost-recovery procedures, even in states where it has “worked.” That time and energy could have been better spent on the very real implementation issues facing carriers and PSAPs. BellSouth, among others, also notes the failures in some states to win approval of cost-recovery mechanisms,

which APCO suggests is further evidence of the need for the FCC to revisit the entire cost-recovery process.

Finally APCO notes that the State of Washington has submitted a Request for Declaratory Ruling to the Wireless Telecommunications Bureau, seeking an interpretation of various State and Federal laws regarding the E9-1-1 obligations of wireless carriers. Aside from its legal arguments (which APCO will not address herein), Washington's position reflects a strongly held view that the wireless carriers should provide E9-1-1 capability whether or not the State establishes a cost-recovery mechanism for carriers.

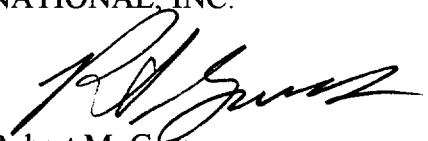
CONCLUSION

For the reasons stated above, and in APCO's prior submissions on this matter, the Commission should move quickly to modify or clarify its rules to eliminate any requirement that there be a cost-recovery mechanism in place before a carrier must comply with the wireless E9-1-1 rules.

Respectfully submitted,

ASSOCIATION OF PUBLIC-SAFETY
COMMUNICATIONS OFFICIALS-
INTERNATIONAL, INC.

By:



Robert M. Gurss
WILKES, ARTIS, HEDRICK & LANE,
Chartered
1666 K Street, N.W. #1100
Washington, D.C. 20006
(202) 457-7329

October 27, 1999

CERTIFICATE OF SERVICE

I, Jane Nauman, hereby certify that a copy of the foregoing Ex Parte Reply of APCO to Comments Filed in Response to Public Notice of August 16, 1999, was sent on this 27th day of October, 1999, via U.S. Mail, postage prepaid, to the following individuals at the addresses listed below:

Thomas Sugrue, Esquire /Chief*
Wireless Telecommunications Bureau
Federal Communications Commission
445 Twelfth Street, SW, Room 3-C252
Washington, DC 20554

James D. Schlichting, Esq., Deputy Chief*
Wireless Telecommunications Bureau
Federal Communications Commission
445 Twelfth Street, SW, Room 3-C204
Washington, DC 20554

Ari Fitzgerald, Esquire*
Legal Advisor to Chairman Kennard
Federal Communications Commission
445 Twelfth Street, SW, Room 8-B201
Washington, DC 20554

Mark Schneider, Esq.*
Senior Legal Advisor to Comm. Ness
Federal Communications Commission
445 Twelfth Street, SW, Room 8-B115
Washington, DC 20554

Adam Krinsky, Esq.*
Legal Advisor/Commissioner Tristani
Federal Communications Commission
445 Twelfth Street, SW, Room 8-C302
Washington, DC 20554

Peter Tenhula, Esq.*
Office of Commissioner Powell
Federal Communications Commission
445 Twelfth Street, SW, Room 8-A204
Washington, DC 20554

Bryan Tramont, Esq.*
Office of Commissioner Furchtgott-Roth
Federal Communications Commission
445 Twelfth Street, SW, Room 8-A302
Washington, DC 20554

E. Ashton Johnston, Esq.
Omnipoint Communications, Inc.
c/o Piper & Marbury
1200 19th Street, NW
Washington, DC 20036

Marci E. Greenstein, Esq.
Rural Cellular Association
C/o Kraskin, Lesse & Cosson
2120 L Street, NW, Suite 520
Washington, DC 20037

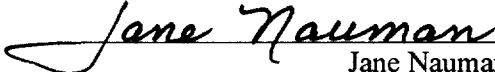
Michael F. Altschul, Esq.
Vice President & General Counsel
CTIA
1250 Connecticut Avenue, NW, #800
Washington, DC 20036

Mr. Johnathan M. Chambers
Vice President
Sprint PCS
1801 K Street, NW, Suite M112
Washington, DC 20036

Pamela J. Riley, Esq.
AirTouch Communications, Inc.
1818 N Street, NW, Suite 800
Washington, DC 20036

David G. Frolio, Esq.
BellSouth Corporation
1133 21st Street, NW
Washington, DC 20036

* by hand


Jane Nauman